

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VOLUMECCOMO APPAREL, INC.,

Plaintiff,

v.

EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC.; EXPEDITORS  
INTERNATIONAL OCEAN,

Defendants.

HANJIN SHIPPING CO., LTD,

Third-Party Plaintiff,

v.

GEMADEPT CORP.,

Third-Party Defendant.

EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC.,

Third-Party Plaintiff,

v.

GEMADEPT CORP.,

Third-Party Defendant.

) Case No. 11-4201-SC

)  
) ORDER GRANTING GEMADEPT'S  
) MOTION TO DISMISS

**I. INTRODUCTION**

Volumeccocomo Apparel, Inc. ("Volumeccocomo") brings this action against Expeditors International of Washington, Inc. and Expeditors International Ocean (collectively, "Expeditors") for loss of and damage to ocean cargo. ECF No. 1 ("Volumeccocomo Compl.").

Volumeccocomo's action has triggered a number of third-party actions for indemnity and contribution: (1) Expeditors filed a third-party complaint against Hanjin Shipping Co., Ltd, ("Hanjin"); (2) Hanjin filed a third-party complaint against Gemadept Corporation ("Gemadept"); and (3) Expeditors filed a cross-claim against Gemadept. ECF Nos. 8 ("Expeditors Compl."); 21 ("Hanjin Compl."); 26 ("Expeditors Crosscl."). Gemadept now moves to dismiss Hanjin's third-party complaint and Expeditors' cross-claim for lack of personal jurisdiction.<sup>1</sup> ECF No. 27 ("Mot."). The Motion is fully briefed. ECF Nos. 31 ("Hanjin Opp'n"), 32 ("Expeditors Opp'n"), 34 ("Reply"). Pursuant to the local rules, the Court finds this matter appropriate for decision without oral argument. As detailed below, the Court GRANTS Gemadept's Motion.

**II. BACKGROUND**

The complaints filed by the various parties do not include many details, but the Court has been able to piece together the following facts. On or about January 22, 2011, Volumeccocomo delivered 4,947 cartons of women's apparel to Expeditors.

Volumeccocomo Compl. ¶ 4. Expeditors agreed to transport the shipment from Phnom Penh, Cambodia to Los Angeles, California

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<sup>1</sup> As discussed in Section III, *infra*, Gemadept mistakenly brought this Motion under Federal Rule of Civil Procedure 12(b)(6), which concerns a failure to state a claim.

1 aboard "the barge Gemadept," a/k/a the Gemadept 18, and then the  
2 "vessel Hanjin Phoenix." Id. According to Hanjin, Gemadept was  
3 responsible for first transporting the shipment from Phnom Penh to  
4 Ho Chi Minh City, Vietnam. Hanjin Compl. ¶ 3. Both Volumecocomo  
5 and Hanjin allege that the shipment was lost overboard from the  
6 Gemadept 18. Volumecocomo Compl. ¶¶ 6-7; Hanjin Compl. ¶ 5.

7 On August 25, 2011, Volumecocomo filed this admiralty action  
8 against Expeditors, alleging damages of over \$350,000.  
9 Volumecocomo Compl. ¶ 7. Expeditors then sought indemnity and  
10 contribution from Hanjin and Hanjin sought indemnity and  
11 contribution from Gemadept. Expeditors Compl.; Hanjin Compl.  
12 Finally, Expeditors filed a cross-claim against Gemadept, also for  
13 indemnity and contribution. Expeditors Crosscl.

14 On March 1, 2012, Gemadept filed a motion to dismiss  
15 Expeditors' and Hanjin's claims, arguing that this Court lacks  
16 personal jurisdiction. Mot. at 1. In support of the Motion,  
17 Gemadept has filed a declaration by Do Van Minh ("Do"), Gemadept's  
18 General Director. ECF No. 38 ("Do Decl.") ¶ 2. Do declares that  
19 Gemadept is a Vietnamese corporation with its principal place of  
20 business in Ho Chi Minh City; that Gemadept does not own or charter  
21 any vessels that call at ports in the State of California; that  
22 Gemadept has no offices, agents, business records, bank accounts,  
23 property, or employees in California; that Gemadept does not  
24 advertise in California; that Gemadept is not registered to do  
25 business in California; and that Gemadept's contacts with  
26 California are otherwise "non-existent." Id. ¶¶ 4, 7-13.

27 In opposition to the Motion, Expeditors and Hanjin have  
28 submitted several documents which, they argue, show that Gemadept

1 has consented to jurisdiction in this district. These documents  
2 are: (1) the Agreement of Carriage between Hanjin and Gemadept, (2)  
3 the Gemadept Bill of Lading, and (3) the Hanjin Bill of Lading.<sup>2</sup>  
4 Shin Decl. Exs. A ("Agr. Of Carriage"), B ("Gemadept B/L"), C  
5 ("Hanjin B/L").<sup>3</sup>

6 Agreement of Carriage: On October 1, 2010, Hanjin and Gemadept  
7 entered into an Agreement of Carriage covering sea carriage by  
8 Gemadept on Hanjin's behalf between certain Asian ports. Agr. of  
9 Carriage. Among other things, the Agreement of Carriage provides:  
10 "[Gemadept] shall indemnify and hold [Hanjin] harmless from all  
11 expenses and liabilities she may incur which, in any way, may be  
12 from or connected with loss, damage, delay or misdelivery of cargo  
13 and/or containers while in the possession or custody of  
14 [Gemadept]." Id. § 7.01. The Agreement also states:

15 [Gemadept] agrees to subscribe and shall be bound by the  
16 terms and conditions of [Hanjin's] through B/L moving  
17 under this agreement, except as otherwise in conflict  
18 with the provisions of this Agreement. [Gemadept] shall  
19 issue internal memorandum B/L fully incorporating the  
20 cargo description of each through B/L for shipment moving  
under [Hanjin's] through B/L. However, the B/L shall not  
prevail if in conflict with provisions herein and the  
terms and conditions of the through B/L.

21 Id. § 6.01. In other words, Gemadept agreed to be bound by  
22 Hanjin's bills of lading so long as those bills of lading do not  
23 conflict with the terms of the Agreement of Carriage. With respect

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24 <sup>2</sup> The bill of lading ("B/L") "is the basic transportation contract  
25 between the shipper-consignor and the carrier; its terms and  
26 conditions bind the shipper and all connecting carriers." S. Pac.  
Transp. Co. v. Commercial Metals Co., 456 U.S. 336, 342 (1982).

27 <sup>3</sup> Woo-Chol Shin ("Shin"), a claims manager for Hanjin, filed a  
28 declaration in support of Hanjin's opposition to the Motion. ECF  
No. 31-1 ("Shin Decl.").

1 to jurisdiction, the Agreement of Carriage provides: "The courts  
2 of Singapore shall have jurisdiction to settle any dispute which  
3 may arise between the parties in respect of the construction[,]  
4 validity[,], or performance of this Agreement." Id. § 10.02.

5 Gemadept Bill of Lading: On January 22, 2011, Gemadept issued  
6 a bill of lading to Pacific Crown Shipping Ltd., as agent for  
7 Hanjin, for the carriage of eleven shipping containers, including  
8 the two containers in which Volumecocomo's goods were allegedly  
9 shipped from Cambodia to Vietnam aboard the Gemadept 18. Shin  
10 Decl. ¶ 6; Gemadept B/L. In its reply brief, Gemadept points to  
11 the Terms and Conditions of the Gemadept Bill of Lading, which is  
12 attached to the Declaration of Alexander J. Casnocha ("Casnocha"),  
13 Gemadept's attorney. ECF No. 40 ("Casnocha Decl.") Ex. A.  
14 ("Gemadept B/L Terms & Conditions"). Among other things, the Terms  
15 and Conditions provide:

16 (2) Jurisdiction

17 All actions under the contract of Carriage evidenced by  
18 this Bill of Lading shall be brought before the economic  
19 Court at HoChiMinh [sic] City and no other Court shall  
20 have jurisdiction with regard to any such action, unless  
the Carrier appeals to another jurisdiction or  
voluntarily submits himself thereto.

21 Id. § 27.

22 Hanjin Bill of Lading: Also on January 22, 2011, Hanjin issued  
23 a bill of lading to Expeditors for the containers holding  
24 Volumecocomo's goods. Shin Decl. ¶ 10; Hanjin B/L. The reverse  
25 side of the Hanjin Bill of Lading defines certain terms. "Carrier"  
26 means "Hanjin . . . , its vessel, agents and subcontractors at all  
27 stages of carriage . . . ." Id. § 1(b). "Merchant" means "any  
28 actual or previous holder of this Bill of Lading, and shall include

1 shipper, consignor, consignee, owner and receiver of the Goods and  
2 their agents." Id. § 1(f). "'Subcontractor' identifies all  
3 interests engaged in owning operating or chartering the vessel,"  
4 including the "feeder line." Id. § 1(i). The front of the Hanjin  
5 Seaway Bill identifies Expeditors as the "shipper" and "consignee";  
6 Long Beach, California as "the port of discharge"; Phnom Penh as  
7 the "Pier or Place of Receipt"; and Gemadept 18 as the "pre-  
8 carriage." Id.

9 The Hanjin Bill of Lading also contains provisions relating to  
10 choice of law and the proper jurisdiction for disputes among the  
11 parties. Specifically, the back of the Hanjin Bill of Lading  
12 provides:

13 Disputes arising under the Bill of Lading shall be  
14 determined at the option of the Merchant [i.e.,  
15 Expeditors] by the courts and in accordance with the law  
16 (including choice of law) at (i) the Carrier's [i.e.,  
17 Hanjin's] principal place of business . . . ; or (ii) the  
place of receipt of the Goods by the Carrier, or the port  
of discharge [i.e., Long Beach, California].

18 Id. § 3(a). While the Hanjin Bill of Lading refers to the Gemadept  
19 18, there is no indication that Gemadept ever consented to it.

### 20 21 **III. LEGAL STANDARD**

22 Gemadept mistakenly moves to dismiss under Federal Rule of  
23 Civil Procedure 12(b)(6). The basis of Gemadept's motion is lack  
24 of personal jurisdiction, and, thus, the motion should have been  
25 brought under Rule 12(b)(2). Despite this mistake, the Court  
26 treats Gemadept's motion as one brought under Rule 12(b)(2).  
27 Gemadepts' intent was clear from its papers. Further, as both  
28 Hanjin and Expeditors have substantively addressed Gemadept's

1 personal jurisdiction arguments, this approach will not unfairly  
2 prejudice any of the parties and avoid duplicative briefing.

3 Where a court considers a motion to dismiss for lack of  
4 jurisdiction without an evidentiary hearing, "the plaintiff need  
5 only demonstrate facts that if true would support jurisdiction over  
6 the defendant." Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir.  
7 1995) (citations omitted). Jurisdiction must comport with both the  
8 long-arm statute of the state in which the district court sits and  
9 the constitutional requirements of due process. Mattel, Inc., v.  
10 Greiner & Hausser GmbH, 354 F.3d 857, 863 (9th Cir. 2003). Under  
11 California's long-arm statute, Cal. Code Civ. Proc. § 410.10,  
12 courts may exercise jurisdiction to the extent permitted by the Due  
13 Process Clause of the Constitution. Panavision v. Toeppen, 141  
14 F.3d 1316, 1320 (9th Cir. 1998). The Due Process Clause allows  
15 federal courts to exercise jurisdiction where the defendant has had  
16 sufficient minimum contacts with the forum such that exercise of  
17 jurisdiction is reasonable. Id. Personal jurisdiction can also be  
18 established by the defendant's express or implied consent to be  
19 sued in the forum state. Chan v. Soc'y Expeditions, 39 F.3d 1398,  
20 1406 (9th Cir. 1994).

#### 21 22 **IV. DISCUSSION**

23 Gemadept argues that the Court lacks personal jurisdiction  
24 because Gemadept has "absolutely zero contact with California."  
25 Mot. at 5. Gemadept points out that it operates out of Vietnam and  
26 has no employees, offices, or property in California and that its  
27 vessels do not call at ports in California. Id. at 2 (citing Do  
28 Decl.). Further, the incident that allegedly gave rise to this

1 action occurred thousands of miles away from California.

2       Expeditors and Hanjin do not dispute these factual  
3 contentions, but argue that Gemadept has consented to jurisdiction  
4 in California through its Agreement of Carriage with Hanjin and  
5 Hanjin's Bill of Lading. Expeditors Opp'n at 4-10, Hanjin at 10-  
6 17. In short, Expeditors and Hanjin's theory is this: (1) Under  
7 Section 6.01 of the Agreement of Carriage, Gemadept agreed to be  
8 bound by the terms and conditions of Hanjin's bills of lading; and  
9 (2) Under Section 3(a) of the Hanjin Bill of Lading, the  
10 jurisdiction for disputes arising out of the Hanjin Bill of Lading  
11 may be determined at the option of the "Merchant," i.e.,  
12 Expeditors, and Expeditors has the option of litigating disputes at  
13 the port of discharge, i.e., California.

14       As Gemadept points out, Expeditors and Hanjin's analysis  
15 overlooks key provisions of the Agreement of Carriage -- the only  
16 relevant agreement in this case to which both Hanjin and Gemadept  
17 consented. Under the Agreement of Carriage, "[t]he courts of  
18 Singapore shall have jurisdiction to settle any dispute[] which may  
19 arise between [Hanjin and Gemadept] in respect of the  
20 construction[, ] validity[, ] or performance of this Agreement."  
21 Agr. of Carriage § 10.02. This provision directly conflicts with  
22 Section 3(a) of the Hanjin Bill of Lading, which would allow for  
23 jurisdiction in California. Gemadept agreed to "subscribe to and  
24 [] be bound by the terms and conditions of [Hanjin]'s through B/L .  
25 . . except as otherwise in conflict with the provisions of [the  
26 Agreement of Carriage]." Id. § 6.01. Thus, the Agreement of  
27 Carriage's jurisdiction selection clause -- which sets jurisdiction  
28 in Singapore -- must prevail over the jurisdiction selection clause



1 in the Hanjin Bill of Lading.<sup>4</sup> To hold otherwise would bind  
2 Gemadept to contractual terms to which it never consented -- terms  
3 which conflict with the Agreement of Carriage to which both  
4 Gemadept and Hanjin consented.

5 As Gemadept has no contacts with California and has not  
6 consented to be sued here, the Court finds that Hanjin and  
7 Expeditors' complaints against Gemadept fail for lack of personal  
8 jurisdiction.

9  
10 **V. CONCLUSION**

11 For the reasons set forth above, the Court GRANTS Gemadept's  
12 Motion to Dismiss and DISMISSES Hanjin's Third-Party Complaint (ECF  
13 No. 21) and Expeditors' Crossclaim (ECF No. 26) for lack of  
14 personal jurisdiction.

15  
16 IT IS SO ORDERED.

17  
18 Dated: April 9, 2012

19   
20 UNITED STATES DISTRICT JUDGE

21  
22 <sup>4</sup> Gemadept also argues that the Terms and Conditions of the  
23 Gemadept Bill of Lading, which provide that only the Economic Court  
24 at Ho Chi Minh City shall have jurisdiction over disputes arising  
25 out of the Gemadept Bill of Lading, are dispositive. Reply at 4.  
26 The Court disagrees. As an initial matter, Gemadept failed to  
27 properly authenticate or establish the foundation for the Terms and  
28 Conditions. But even if the evidence were admissible, it would not  
be dispositive. Under the Agreement of Carriage, Gemadept's bills  
of lading "shall not prevail if in conflict with provisions [of the  
Agreement of Carriage] and the terms and conditions of [Hanjin's]  
through B/L." Agr. of Carriage § 6.01. Here, the jurisdictional  
provisions of the Gemadept Bill of Lading conflict with the  
jurisdictional provisions of both the Hanjin Bill of Lading and the  
Agreement of Carriage.